

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

**MISC. NO. 3:06-mc-84**

**IN RE: ALLOCATION OF CHARLOTTE DIVISION  
CRIMINAL , CIVIL, MISCELLANEOUS, AND  
"DECLINATION TO CONSENT" CASES**

**ORDER**

The following case assignment allocations will be applied in the Charlotte division and supercede all other prior orders as they may relate to the Charlotte division. These case assignment allocations are effective commencing *July 3, 2006*.

- 1.) Effective **July 3, 2006**, all grand jury returns filed in the Charlotte division shall be randomly assigned equally among Judge Conrad and Judge Whitney.
  - a.) Any case in which Judge Conrad has a conflict shall first be reassigned to Judge Whitney, and then Judge Voorhees and then to Judge Thornburg.
  - b.) Any case in which Judge Whitney has a conflict shall first be reassigned to Judge Conrad, then to Judge Voorhees, and then to Judge Thornburg.
  - b.) All of Judge Mullen's pending criminal cases, minus those cases he has identified as remaining with him, shall be reassigned to Judge Whitney.
  - c.) All of Judge Voorhees' pending criminal cases, minus those cases he has identified as remaining with him, shall be reassigned to Judge Whitney.
  - d.) Any criminal case filed in any division of this court may be assigned by the Chief Judge to a Senior Judge of this court with consent of the senior judge.
- 2.) Judge Conrad, Judge Whitney, Senior Judge Mullen, Magistrate Judge Keesler and Magistrate Judge Horn shall each be randomly assigned one-fifth of the civil cases, including 42 U.S.C. §1983 actions in which plaintiff has counsel.

- 3.) Judge Conrad, Judge Whitney and Senior Judge Mullen shall each be randomly assigned one-third of the civil cases filed in the Charlotte division which were initially assigned to a magistrate judge and one of the parties subsequently declines to consent to the jurisdiction of a magistrate judge. Any case in which both Senior Judge Mullen, Judge Conrad and Judge Whitney have a conflict shall be assigned first to Judge Voorhees and then to Judge Thornburg.
- 4.) Judge Conrad, Judge Whitney and Senior Judge Mullen shall each be randomly assigned one-third of the matters reserved for the District Court Judge draw including bankruptcy appeals, motions to withdraw bankruptcy references, IFPs, 28 U.S.C. Section 2254 actions in which the plaintiff has counsel (except for death penalty cases which are the subject of a separate order), and miscellaneous civil matters. All TROs shall be randomly assigned to Judge Conrad, Judge Whitney and Senior Judge Mullen.
- 5.) Senior Judge Mullen, Judge Voorhees, Judge Conrad, Judge Whitney and Judge Thornburg shall continue to be assigned the 28 U.S.C. Section 2255 actions in which they were the presiding judges, respectively, in the underlying criminal cases. Any such actions filed as to cases in which a Visiting Judge was the presiding judge shall stay with that Visiting Judge unless the Visiting Judge issues an order requesting the motion to be reassigned at which time the motion shall be reassigned to one of our active district court judges in accordance with existing procedures.
- 6.) Any civil case initially assigned to Senior Judge Potter or Judge McKnight which is remanded for further proceedings pursuant to the Mandate of the U.S. Court of Appeals for the Fourth Circuit shall be assigned to Senior Judge Mullen and Judge Whitney according to docket number. Odd numbered cases shall be assigned to Senior Judge Mullen and even numbered cases shall be assigned to Judge Whitney.
- 7.) Any motion filed under Section 2255 of 28 U.S.C. in which Senior Judge Potter or Judge McKnight was the presiding judge shall be assigned to Judge Whitney and Judge Conrad according to docket number. Odd numbered cases shall be assigned to Judge Whitney and even numbered cases shall be assigned to Judge Conrad.
- 8.) Any violation proceedings and supplemental filings filed on criminal cases in which Senior Judge Potter or Judge McKnight was the presiding judge shall be assigned to Judge Whitney and Judge Conrad according to docket number. Odd numbered cases shall be assigned to Judge Whitney and even numbered cases shall be assigned to Judge Conrad.

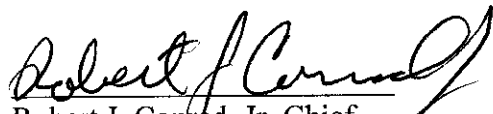
- 10.) Senior Judge Mullen shall be assigned all prisoner pro se cases filed pursuant to 42 U.S.C. Section 1983 and 28 U.S.C. Section 2254 (non-death penalty cases).
  - a.) Senior Judge Mullen shall supervise all Pro Se Law Clerks until further notice by the Chief Judge.
- 11.) A separate Order will be issued addressing the assignment of death penalty cases and the reassignment of civil cases among the judges.

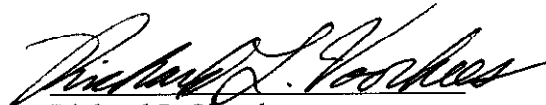
**IT IS FURTHER ORDERED**, that where previous random assignment has occurred for preliminary matters, such as bond appeals, and where more than one judge is in the criminal draw of a particular division, the following rules shall apply:

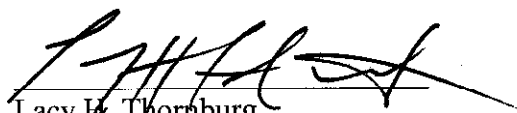
- 12.) Where a single defendant indictment is handed down, assign case to the judge of the previous random assignment.
- 13.) Where a multiple defendant indictment is handed down, assign case to the judge who received the first previous random assignment of any of the defendants.
- 14.) The sole authority to change a previous random assignment resides with the Chief Judge, upon consultation with any other judge directly affected.
- 15.) The clerk's office will faithfully execute its obligation to assign cases on a random basis, where multiple judges are in the draw, subject to pretermission only by the Chief Judge, as stated above.
- 16.) Any questions from the clerk as to proper procedure will be referred to the Chief Judge. For example, if bond is allowed by the magistrate judge and the government seeks immediate stay of release pending appeal to the District Court, and the randomly selected district judge is unavailable, the matter will be heard by a judge designated by the Chief Judge.
- 17.) The central principles governing this section of the Order are: a) Preservation of the integrity of the random assignment procedure, and b) Assignment of a given case to the same judge throughout its course.

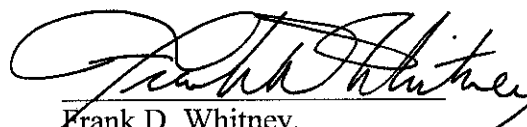
The Clerk is directed to serve copies of this Order to all District Court Judges, all Magistrate Judges, the United States Attorney, the Chief United States Probation Officer, the United States Marshall, all deputy clerks and all court reporters.

**IT IS SO ORDERED**, this 3<sup>rd</sup> day of July, 2006.

  
Robert J. Conrad, Jr. Chief  
United States District Court Judge

  
Richard L. Voorhees  
United States District Judge

  
Lacy H. Thornburg  
United States District Judge

  
Frank D. Whitney.  
United States District Judge